

CAPTAIN JOHN DOWNES.

[To accompany bill H. R. No. 47.]

FEBRUARY 29, 1840.

Mr. GIDDINGS, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom was committed the petition of John Downes, report :

That this claim has been several times submitted to the Committee of Claims, and has been favorably reported upon. [Vide report No. 33, 1st session 24th Congress; also report No. 728, of 2d session.] The committee have again examined the case, and refer to the reports aforesaid as part of this report; and herewith report a bill.

DECEMBER 21, 1835.

The Committee of Claims, to whom was referred the memorial of John Downes, a captain in the navy of the United States, report :

This case was examined by the Committee of Claims at the 2d session of the last Congress, when a report favorable to the claim of the petitioner was made to the House, accompanied by a bill for his relief, on which there was no definitive action. This committee, concurring in the report of the last session, adopt the same, and herewith report a bill for the petitioner's relief.

JANUARY 14, 1835.

The Committee of Claims, to whom was referred the petition of John Downes, a captain in the navy of the United States, report :

That it appears that, in the year 1825, the petitioner was ordered on from Boston to Washington, as a member of the court martial which sat on the trial of Commodore Porter; that, while he was at Washington on this business, or public duty, he was informed by Tobias Watkins, who was then Fourth Auditor, that there was a balance due him from the Navy Department; that his account was accordingly made out, including pay, rations, travelling expenses, and attendance as a member of the court

martial, up to the date of said settlement; that there was a balance due him of seven hundred and twenty-three dollars and sixty cents; that, when the papers were prepared and ready, said Watkins asked him if he wanted to use the money in Washington, or whether he preferred the money, or a draft on the navy agent at Boston; that the petitioner replied that he did not wish to use the money in Washington, and would prefer a draft on the navy agent at Boston for the amount. Watkins then said, "Give me an order for the amount due you, in favor of my messenger; and when you are ready to start for Boston I will give you the order for the amount." That the petitioner did give the order for the amount of seven hundred and twenty-three dollars and sixty cents, and received a certificate of the amount due him; that, in a few days, when he was prepared to leave Washington, he called at the office for his money, and, on presenting the certificate, received the draft, which was duly paid by the navy agent at Boston, amounting to seven hundred and twenty-three dollars and sixty cents; that the petitioner soon after went to sea, and, when he returned to Washington in 1830, was informed, for the first time, that he stood charged on his account with the first sum of seven hundred and twenty-three dollars and sixty cents, which had been drawn on his order in favor of the messenger of the Fourth Auditor, and also with the same amount which he had received on the official draft on the navy agent at Boston, and that the present Fourth Auditor had directed the purser of his ship to stop its amount from his pay. This appears to be the history of the transaction, as disclosed by the petitioner. The petitioner laid his claim to be relieved from this double charge for the same payment before the Fourth Auditor: he refused to alter the charge, under the belief that in the first instance the petitioner had, in substance, drawn his pay, and lent the money to Watkins, thereby making it a private debt; and that he had received the official draft, and drawn the money of the public from the navy agent in payment of this private debt. The petitioner now asks Congress to pass a law granting him relief from this charge.

There is nothing in the case, so far as has come to the knowledge of the committee, which satisfies them that the petitioner had drawn and lent the money to Watkins. It does not appear that Watkins asked the petitioner for the loan of the money; it does not appear that he even intimated to him that he wanted to use it, or intended to use it. There is no proof that the petitioner took a note or any security from Watkins when he gave the order—not even a promise to pay the money: he took a certificate, as he states, of the amount due to him when he gave the order to the messenger. The whole arrangement was at the suggestion of the Fourth Auditor. The petitioner was ignorant of the forms of the office, and no doubt supposed that the directions of the officer were necessary to enable him to obtain the draft for his money. He might very readily suppose that the directions conformed to the rules of the office. He did not transact the business with Watkins in any other capacity than as Fourth Auditor. He placed confidence in him, and took his directions as an officer of the Treasury Department. He received payment but once; he did not intend to receive his claim more than once. He intended nothing more, and did nothing more, on his part, than he was led to believe necessary to enable him to get his draft for the amount due him from the Government, and not a private debt due him from Watkins. We do not conceive that he intended to release the Government by his order, and give credit

to Watkins for the same. He appears to have been entirely innocent of any misplaced confidence in Watkins. There does not appear to have been any improper motive on the part of the petitioner. Under these circumstances, it would be a stain upon the justice of the country to suffer this loss to fall upon the petitioner, without any fault whatever in him. The committee, therefore, report a bill in his favor for the sum of seven hundred and twenty-three dollars and sixty cents.

JUNE 2, 1836.

The Committee of Claims, to whom the bill and report in the case of Captain John Downes, of the United States navy, were recommitted, report :

That it is represented by the memorialist that he stands improperly charged on the books of the Treasury in the amount of \$723 60 ; that this charge against him is sustained by the accounting officers, on the allegation that the \$723 60 had been twice paid to Captain Downes—once to the order of Captain Downes, at the Treasury ; again on the draft of Tobias Watkins, drawn in favor of Captain Downes, on Amos Binney, navy agent at Boston ; which draft the memorialist admits was paid to him by A. Binney, but improperly debited to him, the memorialist, at the Treasury.

The facts in this case are fully set forth in the official statements furnished the committee by the Navy Department, and which accompany this report. In these documents it is represented that, in the summer of 1825, the account of Captain J. Downes was settled at the office of the Fourth Auditor, and a balance of \$723 60 found due to him.

Captain Downes gave an order to the messenger in that office on which to receive the \$723 60 due as above ; subsequently thereto, Capt. Downes, being about to leave Washington for Boston, received from T. Watkins his draft on Amos Binney, navy agent at Boston, for \$723 60, payable to Captain John Downes. This draft was dated 27th of August, 1825, and is as follows : " Sir : you will be pleased to pay to the order of Captain John Downes seven hundred and twenty-three dollars and sixty cents, and charge the same in your next account, under the head of pay, &c., &c." Upon this draft Captain Downes received the amount from the navy agent in Boston, who returned it as a voucher in his next account ; on a settlement of which, the \$723 60 was admitted to the credit of the navy agent, on the 24th of December, 1825 ; and the same amount was then charged to the account of Captain Downes on the books of the Treasury. Of this charge so made against Captain Downes, he had no information till some time in the year 1829, when the then Fourth Auditor directed the purser to detain the amount from the pay of Captain Downes, which was accordingly done ; and that sum is still retained from the pay of Captain Downes. These appear to be all the material facts in this case : upon a full consideration of which, and of the legal authority, obligations, and responsibilities of the Fourth Auditor and the navy agent, respectively, *as such*, the committee can perceive no legal or just ground for the charge made against Captain Downes on the books of the Treasury, for the sum received by him from the navy agent, on the draft of the Fourth Auditor as aforesaid.

The office of Fourth Auditor was created by an act of Congress, in 1817, which act defines the duties of that officer. They are, to receive the accounts accruing in the Navy Department, or relative thereto; to examine, certify the balances thereon, and transmit them, with the vouchers and his certificate, to the Second Comptroller for his decision.

To an inquiry propounded by the committee to the present Fourth Auditor, "whether the Fourth Auditor, as such, had authority to draw bills for the payment of money, in favor of an individual, on a navy agent, as such, and to direct the navy agent, on paying such bills, to what account to debit the amount paid;" the present Fourth Auditor, in a written communication appended to this report, says: "From an examination of the law defining the duties of Fourth Auditor, and from the present practice in this (the Fourth Auditor's) office, and the reasons of that practice, I should not hesitate to say, in reply to the inquiry of Mr. Taliaferro, that the Fourth Auditor, as such, has no authority to draw bills for the payment of money, in favor of an individual, on a navy agent, and to direct him, on paying such bills, to what account to debit the amount paid. An agent, therefore, who would pay money upon the separate order or certificate of the Fourth Auditor, would pay it, in my opinion, wholly upon his own responsibility."

And in reply to another inquiry made by the committee of the Fourth Auditor, he says: "In reply to the last question propounded by Mr. Taliaferro, I answer, that it is the duty of the navy agent to apply the funds placed in his hands to specific objects; and it is not one of those objects, in my opinion, that he should pay drafts drawn on him by the Fourth Auditor. The agent has, for his government, the laws of Congress, the regulations of the Navy Department, and the instructions which may be given him from this office, approved by the Second Comptroller. But I apprehend that neither the *regulations* nor the *instructions*, are *binding* on him, unless they are in conformity with the *laws*." In this view of the Fourth Auditor, of the powers and duties of an Auditor and navy agent, under the law, the committee concur; and in accordance with that opinion the committee come to the conclusion that the draft in question, drawn by T. Watkins on Amos Binney, and paid by him to Captain Downes, gave to the navy agent no legal claim to a credit for the amount in the settlement of his account with the Government; that the amount so paid by the navy agent was properly chargeable to T. Watkins, the drawer, and to no other. The committee cannot perceive on what principle of law or justice the amount of an unauthorized order, drawn by the Fourth Auditor in favor of an individual, on a navy agent, can be charged to such individual in any transactions he may happen subsequently to have with the Government.

In the investigation of this case, the committee have ascertained, by a communication from the Navy Department, hereto appended, the following facts: The communication referred to states that \$750, being the amount of a draft drawn by T. Watkins, Fourth Auditor, in favor of C. Fowler of Washington, on James K. Paulding, navy agent at New York, was charged to the United States by J. K. Paulding, as navy agent, in his account of the first quarter of 1828, received at the office of the Fourth Auditor 5th of May, audited the 20th, and admitted by the Second Comptroller 5th of June, 1828. But in the settlement the charge of \$750 was suspended for the want of a voucher to support it.

Subsequently, however, a receipt in favor of the navy agent, together with his check on the Bank of the United States, were received at the office of the Fourth Auditor; and on the 3d of June, 1829, the then Fourth Auditor, A. Kendall, directed the amount to be passed to the credit of the said agent by charging the same to T. Watkins.

It further appears, by evidence derived from the same source, that T. Watkins, as Fourth Auditor, drew two other drafts, at or about the time aforesaid, for \$500 each, on the said J. K. Paulding, as navy agent, payable to C. Fowler; which amount, after the same proceedings had on these as on the draft for \$750, was charged to T. Watkins on the books of the Treasury.

In like manner T. Watkins drew three several drafts in favor of C. Fowler, on R. R. Harris, navy agent at Boston; that is to say: one draft dated on or about the 14th of August, 1827, for \$300; a second draft on or about the 4th of September, 1827, for \$500; a third draft for \$500, on or about the 19th of the same month; and a fourth draft for \$700, on or about the 3d of October, 1827: all which drafts were paid, but suspended from the credit of the navy agent in the settlement of his account, from the first quarter in the year 1828 to the 3d of June, 1829; when, by order of the Fourth Auditor, A. Kendall, these several items, amounting to \$2,000, were admitted to the credit of Harris, the navy agent, and charged to T. Watkins on the books of the Treasury. The committee can suggest no good reason why all these drafts, drawn by T. Watkins on the navy agents at New York and at Boston should be charged on the books of the Treasury to T. Watkins; while the draft drawn by him, in favor of Captain Downes, on the navy agent Amos Binney, should be charged on the same books to Captain Downes.

After a careful examination of this case, the committee are of opinion that the draft in question for \$723 60, drawn as aforesaid, by T. Watkins, in favor of Captain Downes, on A. Binney, as navy agent, and paid by the navy agent, presents a transaction in which the Government, whose agents the drawer and drawee were, had no manner of interest or concern.

The Fourth Auditor, officially, has no control over the public money. A navy agent gives bond and security to disburse the public funds confided to him to specific objects. To pay drafts drawn by the Fourth Auditor on him as navy agent, is not one of the objects to which he is permitted to apply the public funds in his hands. The committee can see the matter in no other aspect than as an individual transaction between T. Watkins and Amos Binney, in which Government could in nowise be affected; nor is it possible for the committee to perceive how Captain Downes can be so implicated as to make him debtor to the Government for the amount of a draft drawn by T. Watkins, without official authority, in his favor, on a navy agent, who, without official authority, paid the draft.

